



Dennis J. Duffin
Director

The Commonwealth of Massachusetts

Office of Campaign & Political Finance

One Ashburton Place, Boston 02108

727-8352

May 26, 1988
AO-88-19

Alec Gray, Esquire
205 Portland Street
Sixth Floor
Boston, MA 02114

Dear Mr. Gray:

This letter is in response to your request for an advisory opinion.

You have stated that you are engaged in the private practice of law. You have a law office from which you perform numerous and varied legal services for diverse clients. Most of your clients are individuals, businesses, and other associations who have no affiliation with state, county, or municipal governments. A portion of your business involves providing legal services to certain governmental agencies. For example, you have contracts with the Department of the Attorney General to handle certain specifically enumerated law suits. Similarly, you have contracts with other agencies to handle particular law suits and/or to consult on particular issues.

You do not report to any state officer, official or employee concerning the manner and way in which you perform any of the work under the various contracts. At most, you provide periodic status reports as to the current posture of the litigation. You make all decisions concerning the manner and way in which the litigation is conducted. The work that is performed pursuant to these contracts is performed according to your schedule; your work hours are not set by the contracts or by the different state agencies. As a necessary part of the contracts, you provide not only the legal acumen, but the necessary ancillary services, such as secretarial assistance and research facilities.

The agencies with which you contract do not provide you with business cards or stationery of any sort, nor do you represent yourself in any way as being an employee of those agencies. The documents that you file with the various courts reflect the fact that you work from your own office, at your own address and use your own telephone and that you

Alec Gray, Esquire
May 26, 1988
Page 2

are not an employee of any governmental unit. No communication comes to or from you through the contracting agencies.

While you have several contracts with different agencies, the work reflected by these contracts is substantially less than half of the total amount of work that you performed during the past year. You would anticipate that the percentage would decrease rather than increase, in the coming years.

You have asked whether the prohibition set forth in section 13 of M.G.L. c.55 against persons employed for compensation by the commonwealth, and certain other public entities, from soliciting political contributions would be applicable to the following persons:

1. An individual who is an independent contractor with various state agencies.
2. An individual who is a sole practitioner incorporated as a professional corporation, if the services performed for various state agencies by such individual are performed under a contract between such agencies and the professional corporation.
3. All members of a partnership, if the services performed for various state agencies are performed under a contract between such agencies and the partnership.
4. An individual who is employed by a law firm or other business, but who is providing services to a state agency under a contract between such agency and himself.

Section 13 of M.G.L. c.55 states in pertinent part:

"No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected

Alec Gray, Esquire
May 26, 1988
Page 3

political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility."

The key to the application of the prohibition contained in section 13 of M.G.L. c.55 to any individual is whether or not such individual is "employed for compensation" by a particular governmental entity.

Clearly, in the scenarios you have described in the questions above, each individual would be compensated, indirectly or directly and to a greater or lesser degree, by a governmental entity. The applicability of section 13 must therefore be examined in light of whether or not the described individuals are "employed" by a governmental entity.

You are engaged in the private practice of law and a majority of your clients may be categorized as non-governmental. Furthermore, you are not supervised in the work you perform for your governmental clients. In addition, you provide your own facilities, equipment, personnel and supplies in performing the services under contract to the governmental entities.

In the opinion of this office, the situations, described in the four questions you have posed above, when considered on the basis of the representations made in your letter, would not make you, or a member of your firm, as an individual described in such questions, a "person employed for compensation" by a governmental entity. While you, or a member of your firm, would be compensated for services rendered, the type of service performed indicates that it is done by an independent contractor rather than an employee.

Alec Gray, Esquire
May 26, 1988
Page 4


It is the opinion of this office that such an independent contractor is not prohibited from engaging in the type of activity proscribed by section 13.

In addition, please note that section 16 provides that "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so."

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55. You had inquired as to the applicability of section 13 to other individual lawyers, many of whom are in partnerships that have contracts with state agencies or who work on cases under contract with the state but who are themselves employees of law firms. Although this opinion may describe each such lawyer's position generally, it has been issued for your advice only. We would, of course, be happy to issue an advisory opinion to any person based on that person's particular circumstances.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,


Dennis J. Duffin
Director